

BEFORE THE DEPARTMENT OF ADMINISTRATION
OFFICE OF THE STATE PUBLIC DEFENDER
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I through VI pertaining to the)
Office of the State Public Defender)

TO: All Concerned Persons

1. On September 7, 2006, the Office of the State Public Defender published MAR Notice No. 2-2-377 regarding a public hearing on the proposed adoption of the above-stated rules at page 2068, 2006 Montana Administrative Register, issue number 17.

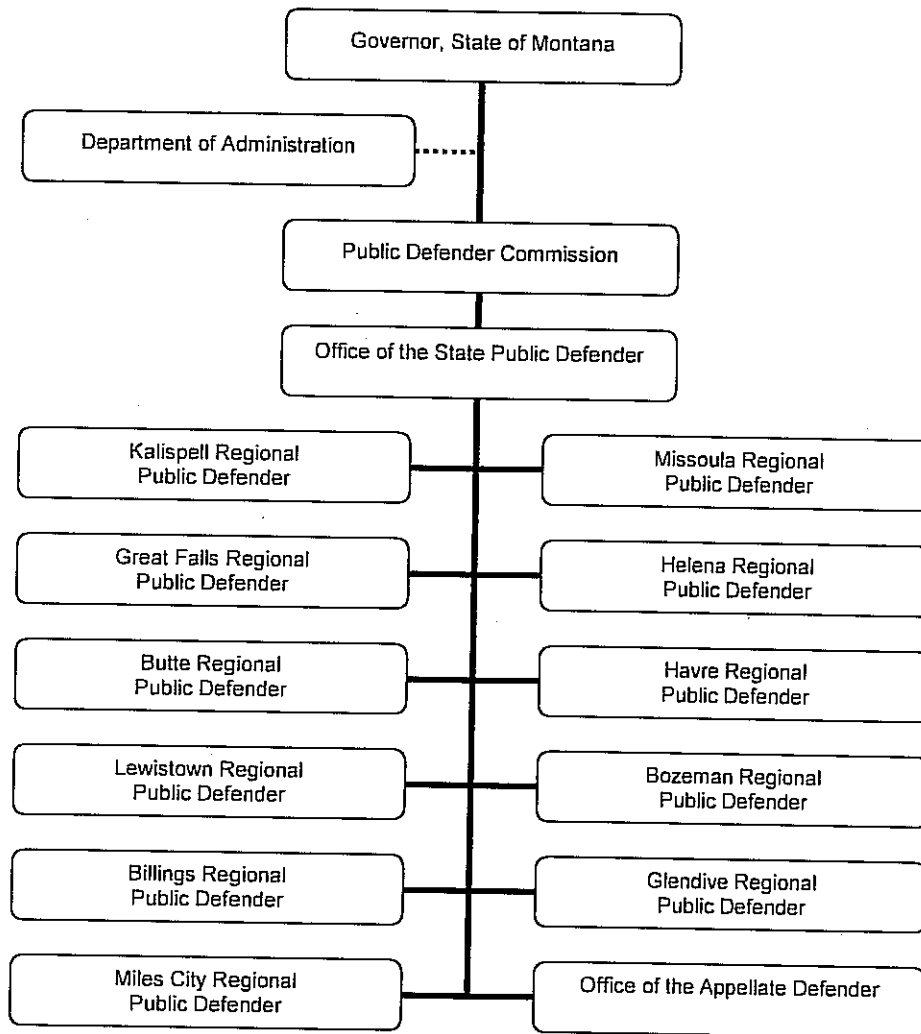
2. The office has adopted New Rules II (2.69.201), III (2.69.202), IV (2.69.203), and VI (2.69.601) exactly as proposed. The office has adopted New Rules I (2.69.101) and V (2.69.301) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (2.69.101) ORGANIZATION OF THE STATEWIDE PUBLIC DEFENDER SYSTEM (1) through (3) remain as proposed.

(4) Organization Chart.

The proposed organization chart is replaced with the following chart to show that the Office of the Appellate Defender reports to the Office of the State Public Defender, not to the Public Defender Commission:

EXHIBIT 6



AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

NEW RULE V (2.69.301) DETERMINATION OF INDIGENCY (1) through (4) remain as proposed.

(5) All information collected on the forms shall be treated as confidential except:

(a) as required in 47-1-111, MCA; or

(b) when judicial review of the determination is requested by the applicant. At that time, the forms shall be submitted to the court for ~~camera~~ in camera inspection.

AUTH: 47-1-105, 47-1-111, MCA

IMP: 47-1-105, 47-1-111, MCA

3. The following comments were received and appear with the office's responses:

COMMENT NO. 1: "Section 47-1-111(2)(c), MCA, provides that information

contained in an application, financial statement, or affidavit for public defender services 'is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing'.

Proposed Rule V(5) provides the 'All information collected on the forms [used for the application, financial statement, or affidavit] shall be treated as confidential except when judicial review of the determination [of whether the applicant is indigent and thus entitled to a public defender] is requested.'

It seems to me that there is a conflict, which needs to be resolved, between the above-quoted statutory and rule provisions. The proposed rule only allows a confidentiality bypass for purposes of judicial review of the determination of the application for a public defender, whereas the statute allows a confidentiality bypass: (1) for purposes of impeachment in a civil or criminal action, and (2) in a subsequent prosecution of the applicant for perjury or for false swearing."

RESPONSE NO. 1: The Office of the State Public Defender concurs and revised the rule as shown above.

BY: _____
James Park Taylor, Chair
Montana Public Defender Commission

BY: _____
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State October 16, 2006.

STATE OF MONTANA

DEPARTMENT OF ADMINISTRATION
MONTANA PUBLIC DEFENDER COMMISSION

(1) I, James Park Taylor, Chair of the Montana Public Defender Commission, by virtue of and pursuant to the authority vested in me by 47-1-105, MCA, do adopt the annexed rules to wit:

NEW:	I	2.69.101	ORGANIZATION OF THE STATEWIDE PUBLIC DEFENDER SYSTEM
	II	2.69.201	PROCEDURES FOR ADOPTING, AMENDING, AND REPEALING AGENCY RULES
	III	2.69.202	PROCEDURES FOR THE ISSUANCE OF DECLARATORY RULINGS
	IV	2.69.203	DEFINITIONS
	V	2.69.301	DETERMINATION OF INDIGENCY
	VI	2.69.601	REASONABLE COMPENSATION

as permanent rules of this department.

(2) This order after being recorded in the order register of this department shall be forwarded to the Secretary of State for filing.

APPROVED AND ADOPTED October 16, 2006

BY:

James Park Taylor, Chair
Montana Public Defender Commission

Certified to the Secretary of State October 16, 2006

Montana Administrative Register 2-2-377